

DEC 15 1989

JOSEPH F. SPANIOLO, JR.  
CLERK

No. 89-474

IN THE

**Supreme Court of the United States****October Term, 1989****WILLIAM V. GRADY, DISTRICT ATTORNEY OF  
DUTCHESS COUNTY,***Petitioner,*

vs.

**THOMAS J. CORBIN,***Respondent.***ON WRIT OF CERTIORARI TO THE NEW YORK STATE COURT  
OF APPEALS****JOINT APPENDIX**

**WILLIAM V. GRADY\***  
*District Attorney of  
Dutchess County*  
Courthouse  
10 Market Street  
Poughkeepsie, NY 12601  
(914) 431-1940  
*Petitioner, Pro Se*

**STEPHEN L. GRELLER\***  
**CRANE, WOLFSON, ROBERTS  
& GRELLER**  
11 Market Street  
Poughkeepsie, NY 12601  
(914) 454-2200  
*Counsel for Respondent*

\*Counsel of Record

**PETITION FOR CERTIORARI FILED SEPTEMBER 11, 1989  
CERTIORARI GRANTED NOVEMBER 6, 1989**

THE REPORTER COMPANY, INC., Walton, NY 13856-800 252-7181-1989

(3580)

**BEST AVAILABLE COPY**

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<sup>1</sup>See Appendix to the Petition for a Writ of Certiorari at 1 c.

<sup>2</sup>See Appendix to the Petition for a Writ of Certiorari at 1 b.

<sup>3</sup>See Appendix to the Petition for a Writ of Certiorari at 1 a.

**CHRONOLOGICAL LIST OF RELEVANT  
PLEADINGS, HEARINGS AND ORDERS**

1. October 7, 1987—Simplified Traffic Informations issued to defendant Thomas J. Corbin on October 3, 1987, filed in Town Court, Town of LaGrange, Dutchess County, New York
2. October 14, 1987—Statement of Readiness, Notice of Intention to Introduce Statement of Defendant, Supporting Deposition, DWI Foundation Report
3. October 27, 1987—Defendant Thomas J. Corbin arraigned and guilty pleas accepted in the Town Court, Town of LaGrange.
4. November 17, 1987—Defendant Thomas J. Corbin sentenced in Town Court, Town of LaGrange.
5. January 29, 1988—Dutchess County Indictment #6/88 filed in County Court, Dutchess County.
6. February 5, 1988—Defendant Thomas J. Corbin arraigned on Indictment #6/88 by County Court of Dutchess County; Bill of Particulars served and filed.
7. April 4, 1988—Defendant Corbin's Omnibus Motion filed.
8. June 29, 1988—Order of County Court entered deciding Omnibus Motion in part, and ordering a hearing.
9. August 12, 1988—Hearing commenced.
10. August 15, 1988—Hearing concluded.

11. August 18, 1988—Opinion of County Court denying the Motion to Dismiss the Indictment.
12. August 19, 1988—Petition of Thomas J. Corbin seeking relief pursuant to N.Y.CPLR Article 78 in the nature of prohibition filed in New York State Supreme Court, Appellate Division, Second Judicial Department.
13. October 26, 1988—Decision and Order of Appellate Division entered dismissing the petition.
14. December 7, 1988 Notice of Appeal filed.
15. July 13, 1989—Opinion and Order of the New York State Court of Appeals.
16. November 6, 1989—Order of the Supreme Court of the United States granting Petition for a Writ of Certiorari.

## Simplified Traffic Informations.

UT-3.5 (10/85) State of New York • Department of Motor Vehicles  
(PB.01) Z.C.-TU

**UNIFORM TRAFFIC TICKET**

TF: 864825 3

Plate No. OK 50

Driver's License No. Thomas J. Corbin

Vehicle No. 12550

Vehicle Make/Model Ford

Vehicle Year/Make 1987

Vehicle Color Black

Vehicle Type Car

Vehicle Registration 678

Vehicle Insurance NY

Vehicle License 1

In connection with your alleged commission of the following offense committed on

Offense No. 100387 AT 8:00 P.M.

Street No. 55

City/Town/Village Levittown

County Westchester

Location Code 35

IN VIOLATION OF ☒ NYS VET Law ☐ Other Law

Section 1192 Sub 3

Description of Violation DWI

Offense Type 1

Officer's Signature RA Monasco

Officer's Last Name (print) Monasco

Officer's ID No. 01300

Officer's Title 1

Officer's Station 01300

YOU ARE HEREBY DIRECTED TO APPEAR IN THE

COURT OF Levittown

At Town Hall

On Oct 25 1987 AT 7:00 P.M.

A PLEA OF GUILTY TO THIS CHARGE IS EQUIVALENT TO A CONVICTION AFTER TRIAL. IF YOU ARE CONVICTED, NOT ONLY WILL YOU BE LIABLE TO A PENALTY, BUT IN ADDITION YOUR LICENSE TO DRIVE A MOTOR VEHICLE OR MOTORCYCLE, AND YOUR CERTIFICATE OF REGISTRATION, IF ANY, ARE SUBJECT TO SUSPENSION AND REVOCATION AS PRESCRIBED BY LAW.

Upon conviction you may be subject to a mandatory surcharge in the amount prescribed by law.

Your failure to respond may result in a warrant for your arrest or suspension of your driver license.



TF: 06-047		013000		013000		013000	
Last Name		First Name		Middle Name		Suffix	
C. J. ...		...		...		...	
Date of Birth		Month		Day		Year	
...		...		...		...	
Material Identification Number		...		...		...	
EIS 0000		0000		0000		0000	
U.S. State		U.S. City		U.S. County		U.S. Zip	
...		...		...		...	
Plate Number		Plate State		Plate Type		Plate Color	
VERC 98		...		...		...	
Vehicle Year/Make		...		...		...	
59 CHRY		...		...		...	
In connection with your alleged commission of the following offense committed on							
Offense		...		...		...	
SA 10-05-87		AT 6:55		PM		...	
Street Address		City		State		Zip	
ON: 10-05-87		...		...		...	
IN C/VN OF		...		...		...	
...		...		...		...	
IN VIOLATION OF		...		...		...	
...		...		...		...	
Description of Violation		...		...		...	
FAILURE TO KEEP RIGHT		...		...		...	
Officer's Signature		...		...		...	
...		...		...		...	
NOC/01		DN/Troop		PCT/Zone		Sector/Region	
013000		...		...		...	
Officer's Last Name (print)		...		...		...	
WILLIAMS		...		...		...	

**YOU ARE HEREBY DIRECTED TO APPEAR IN THE**

COURT TOWN OF LAGUNA

Address: SIRINGHAM RU

29 MAGRANVILLE NY

ON 10-29 19 87 AT 750h

**A PLEA OF GUILTY TO THIS CHARGE IS EQUIVALENT TO A CONVICTION AFTER TRIAL. IF YOU ARE CONVICTED, NOT ONLY WILL YOU BE LIABLE TO A PENALTY, BUT IN ADDITION YOUR LICENSE TO DRIVE A MOTOR VEHICLE OR MOTORCYCLE, AND YOUR CERTIFICATE OF REGISTRATION, IF ANY, ARE SUBJECT TO SUSPENSION AND REVOCATION AS PRESCRIBED BY LAW.**

Upon conviction you may be subject to a ~~discretionary~~ surcharge in the amount prescribed by law.

Your failure to respond may result in a warrant for your arrest or suspension of your driver license.

## 710.30 Notice

STATE OF NEW YORK : DUTCHESS COUNTY

JUSTICE COURT : TOWN OF LAGRANGE

---

 THE PEOPLE OF THE STATE OF NEW YORK
*against*

THOMAS J. CORBIN,

*Defendant.*


---

PLEASE TAKE NOTICE pursuant to Section 710.30 of the Criminal Procedure Law, that during the trial at the above-named matter, the People intend to offer evidence of a statement made by the defendant to a public servant.

The following attached documents contain the statements, along with the circumstances surrounding the time the statements were made, which the People intend to offer:

DWI Investigative Report

Physical Condition Report

X Supporting Deposition

- Huntly Notice and Supporting Deposition

X DWI Foundation Report

Other

Dated: October 14, 1987

Yours, etc.

WILLIAM V. GRADY  
 Dutchess County Dist. Attorney  
 By: MARK H. GLICK  
 Assistant District Attorney  
 Courthouse  
 10 Market Street  
 Poughkeepsie, NY 12601

## DUI INVESTIGATIVE REPORT

DUTCHESS COUNTY, N.Y.

ARREST DATA	Defendant's Name: <u>Thomas J. Corbin</u>		SEX: <u>M</u>	RACE: <u>W</u>	AGE: <u>43</u>	D.O.B.: <u>12/13/43</u>	AGENCY CASE NUMBER: <u>22955-87</u>
	Address: <u>34 Vandewater Dr. Wapping Falls, NY</u>		City: <u>Wapping Falls</u>		State: <u>NY</u>	Zip: <u>12193</u>	Phone: <u>22955-87</u>
	Parent's name, address and phone (Under 18 only)						
	Location of offense: <u>Rte 55</u>		CC DV OF: <u>Lagrange</u>				
	Date of Offense: <u>10/03/87</u>	Time: <u>6:35</u>	<input type="checkbox"/> Sat	<input type="checkbox"/> Holiday	Day of Week: <u>SU</u> <u>MO</u> <u>TU</u> <u>WE</u> <u>TH</u> <u>FR</u> <u>SAT</u>		
	PRINCIPAL OFFENSE CHARGED: <input type="checkbox"/> 1192(B) <input type="checkbox"/> 1192(C) <input type="checkbox"/> 1192(D) <input type="checkbox"/> 1192(E) <input type="checkbox"/> 1192(F) <input type="checkbox"/> 1192(G) <input type="checkbox"/> 1192(H) <input type="checkbox"/> 1192(I) <input type="checkbox"/> 1192(J) <input type="checkbox"/> 1192(K) <input type="checkbox"/> 1192(L) <input type="checkbox"/> 1192(M) <input type="checkbox"/> 1192(N) <input type="checkbox"/> 1192(O) <input type="checkbox"/> 1192(P) <input type="checkbox"/> 1192(Q) <input type="checkbox"/> 1192(R) <input type="checkbox"/> 1192(S) <input type="checkbox"/> 1192(T) <input type="checkbox"/> 1192(U) <input type="checkbox"/> 1192(V) <input type="checkbox"/> 1192(W) <input type="checkbox"/> 1192(X) <input type="checkbox"/> 1192(Y) <input type="checkbox"/> 1192(Z)						
	All other offenses charged: <u>1120 A</u>						
	Alco-sensor test: <input type="checkbox"/> Refused <input type="checkbox"/> Not Necessary <input checked="" type="checkbox"/> Used Positive		Time: <u>7:55</u> AM/PM				
	Chemical Test Information: <input type="checkbox"/> Refused <input type="checkbox"/> Breath <input checked="" type="checkbox"/> Blood <input type="checkbox"/> Urine		Time: <u>8:05</u> AM/PM Result: <u>0.10</u> NAC				
	BREATH TEST: Operator: <u>Susan Spampach</u> Location: <u>St Francis Hospital</u> Unit # <u>1</u>						
BLOOD TEST: Administered by: <u>Susan Spampach</u> Time of Test: <u>8:05</u> Hospital: <u>St Francis</u> Physician: <u>Dr. [illegible]</u>							
Vehicle Operation: <input type="checkbox"/> Officer's direct observation <input type="checkbox"/> Information by defendant		Name & address of witness(es):					
<input type="checkbox"/> Circumstantial <input checked="" type="checkbox"/> Defendant's statement <input type="checkbox"/> Motor Running <input type="checkbox"/> Defendant in Ignition							
Number of persons in car: <u>1</u>							
<input type="checkbox"/> Arraigned <input type="checkbox"/> Pre-arrestment test posted <input type="checkbox"/> Released to: <u>AOR</u>							
ARRESTING OFFICER: <u>Deputy RA Monaco</u> SIGNATURE: <u>RA Monaco</u> AGENCY: <u>DCSO</u>							
Time of Arrest: <u>8:00</u> AM/PM		Mileage Warning: <u>8:30</u> AM/PM					
Location: <u>St Francis Hospital</u>		Location: <u>St Francis Hospital</u>					
JUDGE: _____ COURT: _____							
Date of Arrangement: _____		Bail: <input type="checkbox"/> No, R.O.R. <input type="checkbox"/> Yes, amount \$ _____					
Suspended by the court at arraignment: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A							
Attorney: _____							
Proceedings: <input type="checkbox"/> Guilty plea at arraignment <input type="checkbox"/> Guilty Plea at other stage <input type="checkbox"/> Jury Trial							
<input type="checkbox"/> Bench trial <input type="checkbox"/> Verdict: _____							
<input type="checkbox"/> Dismissal (bribe/s): _____							
Disposition and/or sentence of the Court:							
Probation _____ Jail _____ Intermediate Jail _____ Fine _____ U.S. _____							
Other (suspense): _____ Conditional Discharge _____							
Special conditions of probation or conditional discharge:							
RECEIVED OCT 8 1987 District Attorney's Office DUTCHESS COUNTY, N.Y.							

JUDICIAL DATA

## SUPPORTING DEPOSITION

To Support Simplified Traffic Information — (1192 Cases)

State of New York  
Court of Dutchess

County of Dutchess

People of the State of New York

—against—

Thomas J. Corbin

UTT #

TF 864825-3

P.O. RA Monaco, as and for a supporting deposition as prescribed by Section 100.25 (2) of the Criminal Procedure Law, for the Simplified Traffic Information(s) sworn to and filed against the above-named defendant on the 3 day of October, 19 87, and charging said defendant with a violation of Section 1192- 3, of the Vehicle and Traffic Law of the State of New York does hereby furnish the following factual allegations.

- (1) The violation charged herein was committed by the above-named at approximately 6:35pm on the 3 day of October, 19 87.
- (2) The aforesaid violation was committed on Rte 55 in the City, Town, Village of Lagrange, County of Dutchess and State of New York.
- (3) The above-named defendant, at the aforesaid time and place, was operating a 1987 Chevrolet bearing registration 5 VYR-678 of the State of New York.
- (4) The source of your deponent's allegation with regard to operation of the motor vehicle is based upon direct knowledge or information and belief. (If based upon latter state basis.)
- (5) In support of your deponent's allegation with regard to the intoxication of the defendant, your deponent made the following observations: Strong odor of alcoholic beverage on breath, Red blood shot eyes and slurred speech.
- (6) The source of your deponent's allegations regarding the intoxication of the defendant is based upon direct knowledge or information and belief. (If based upon latter state basis.)

FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE  
AS A CLASS A MISDEMEANOR PURSUANT TO SECTIONS  
210.45 OF THE PENAL LAW.

DATE: 10/03/87AGENCY: DCSO

DUTCHESS COUNTY, N.Y.

RA Monaco  
OFFICER'S SIGNATURE



## DWI FOUNDATION REPORT

DUTCHESS COUNTY, N.Y.

## 1. REASON FOR STOP:

- ☐ ERRATIC OPERATION (DESCRIBE) \_\_\_\_\_  
☐ OTHER \_\_\_\_\_  
☐ VTL VIOLATION OF SECTION(S) \_\_\_\_\_  
☒ ACCIDENT ☐ ONE CAR ☐ TWO CARS OR MORE ☐ PROPERTY DAMAGE  
☐ PERSONAL INJURY ☒ SERIOUS P.I. ☐ FATALITY  
☐ CIVILIAN COMPLAINT ☐ SOBRIETY CHECKPOINT

2. ROAD CONDITIONS: TRAFFIC: Moderate WEATHER: Rain

## 3. PROBABLE CAUSE FOR ARREST:

## OBSERVATIONS OF THE DEFENDANT:

- ☒ DRIVING ☒ ODOR OF ALCOHOLIC BEVERAGE ☒ STRONG ☐ MODERATE ☐ LIGHT  
☒ EYES ☐ BLOODSHOT ☐ WATERY ☐ GLASSY ☒ SLURRED SPEECH ☐ SWAYING WHILE STANDING  
☐ STAGGERED WHILE WALKING ☐ OTHER (DESCRIBE) \_\_\_\_\_

## PERFORMANCE FIELD SOBRIETY TEST FAILED: (DESCRIBE HOW TEST WAS FAILED)

- ☐ RECITING THE ALPHABET \_\_\_\_\_  
☐ FINGER TO NOSE \_\_\_\_\_  
☐ ONE-LEG STAND \_\_\_\_\_  
☐ WALK AND TURN \_\_\_\_\_  
☐ HORIZONTAL GAZE NYSTAGMUS \_\_\_\_\_  
☒ OTHER Inable to perform any field tests due to medical emergency

## OTHER FACTORS:

- ☐ OPEN CONTAINER OF AN ALCOHOLIC BEVERAGE IN OR NEAR VEHICLE  
☒ POSITIVE ALCO-SENSOR ☐ CIVILIAN WITNESS' OBSERVATION  
☐ OTHER (DESCRIBE) \_\_\_\_\_

## 4. STATEMENTS OF THE DEFENDANT:

## AT THE SCENE:

BEFORE MIRANDA: Subject stated that he had been drinkingAFTER MIRANDA: none

OTHER ADMISSIONS NOT INCLUDED ON HUNTLEY NOTICE: \_\_\_\_\_

SUMMARY: blood drawn at St. James Hospital.OTHER COMMENTS: Subject involved in a 2 car seriousPI

## Town Court Notes.

## TOWN OF LA GRANGE

## JUSTICE COURT

10/7/87 Sent copy to ADA Heidi Sauter

10/27/87 Thomas Corbin was present with his attorney,  
 Mark Reisman before Judge Caplicki.

Judge: Waive formal arraignment?

Atty: Yes. My client would like to plea guilty.

Judge: Have you contacted ADA's office?

Atty: Yes. We have received papers. We have also dis-  
 cussed this matter with Mr. Corbin.

Judge: I appreciate your willingness to remove this mat-  
 ter from the calendar as quickly as possible, but I cannot set  
 the sentence until DA night. I can accept the plea. It is my  
 understanding that you wish to enter a plea of guilty?

Def: Yes

Judge: You are pleading voluntarily?

Def: Yes

Judge: Nobody is forcing you to plea?

Def: No

Judge: You have discussed this matter with your attorney  
 and is satisfied with him?

Def: Yes

Judge: Read charges and given a test?

Def: Yes

Judge: You are pleading guilty to Failure to Keep Right  
 also?

Def: Yes

Judge: Adjourn sentencing to 11/17/87. Be back that  
 evening.



11/17/87 Thomas Corbin was present with his attorney, Mark Reisman before Judge Caplicki and ADA Heidi Sauter.

Atty: My client is willing to plea guilty and I request minimum sentence.

Judge: Read charges. We will accept your plea of guilty. Any recommendation on sentence?

Atty: Minimum sentence

Judge: The fine will be \$350 and \$10 surcharge. Your license will be revoked for six months and you will be given a 20 day license. You can also attend the Article 21 school if you are eligible and must successfully complete the course.

# **Indictment.**

## **STATE OF NEW YORK**

COUNTY COURT : DUTCHESS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

*against*

THOMAS J. CORBIN

Indictment #6/88

*Dated the 19th day of January, 1988*

THE GRAND JURY OF THE COUNTY OF DUTCHESS, by this Indictment, accuses THOMAS J. CORBIN of the crime of MANSLAUGHTER IN THE SECOND DEGREE, A CLASS C FELONY, in violation of Section 125.15, subdivision 1 of the Penal Law of the State of New York, committed as follows:

The said defendant, in the Town of LaGrange, County of Dutchess and State of New York, on or about the 3rd day of October, 1987, recklessly caused the death of another person, to wit: Brenda Dirago.

## **SECOND COUNT**

AND THE GRAND JURY AFORESAID, by this Indictment, further accuses THOMAS J. CORBIN of the crime of VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE; A CLASS D

FELONY, in violation of Section 125.12, subdivisions 1 and 2 of the Penal Law of the State of New York, committed as follows:

The said defendant, in the Town of LaGrange, County of Dutchess and State of New York, on or about the 3rd day of October, 1987, with criminal negligence caused the death of another person, to wit: Brenda Dirago, and caused the death of such person, by operating a motor vehicle on a public highway while he had more than .10 of one percentum by weight of alcohol in his blood.

#### THIRD COUNT

AND THE GRAND JURY AFORESAID, by this Indictment, further accuses THOMAS J. CORBIN of the crime of VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE, A CLASS D FELONY, in violation of Section 125.12, subdivisions 1 and 2 of the Penal Law of the State of New York, committed as follows:

The said defendant, in the Town of LaGrange, County of Dutchess and State of New York, on or about the 3rd day of October, 1987, with criminal negligence caused the death of another person, to wit: Brenda Dirago and caused the death of such person by operating a motor vehicle on a public highway while in an intoxicated condition.

#### FOURTH COUNT

AND THE GRAND JURY AFORESAID, by this Indictment, further accuses THOMAS J. CORBIN of the crime of CRIMINALLY NEGLIGENT HOMICIDE, A CLASS E FELONY, in violation of Section 125.10 of the Penal Law of the State of New York, committed as follows:

The said defendant, in the Town of LaGrange, County of Dutchess and State of New York, on or about the 3rd day of October, 1987, with criminal negligence caused the death of another person, to wit: Brenda Dirago.

#### FIFTH COUNT

AND THE GRAND JURY AFORESAID, by this Indictment, further accuses THOMAS J. CORBIN of the crime of ASSAULT IN THE THIRD DEGREE, A CLASS A MISDEMEANOR, in violation of Section 120.00, subdivision 2 of the Penal Law of the State of New York, committed as follows:

The said defendant, in the Town of LaGrange, County of Dutchess and State of New York, on or about the 3rd day of October, 1987, recklessly caused physical injury to another person, to wit: Daniel Dirago.

#### SIXTH COUNT

AND THE GRAND JURY AFORESAID, by this Indictment, further accuses THOMAS J. CORBIN of the crime of OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL, A CLASS A MISDEMEANOR, in violation of Section 1192, subdivision 2 of the Vehicle and Traffic Law of the State of New York, committed as follows:

The said defendant, in the Town of LaGrange, County of Dutchess and State of New York, on or about the 3rd day of October, 1987, operated a motor vehicle on a public highway while he had more than .10 of one percentum by weight of alcohol in his blood.

## SEVENTH COUNT

AND THE GRAND JURY AFORESAID, by this Indictment, further accuses THOMAS J. CORBIN of the crime of OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL, A CLASS A MISDEMEANOR, in violation of Section 1192, subdivision 3 of the Vehicle and Traffic Law of the State of New York, committed as follows:

The said defendant, in the Town of LaGrange, County of Dutchess and State of New York, on or about the 3rd day of October, 1987, operated a motor vehicle on a public highway while he was in an intoxicated condition.

WILLIAM V. GRADY  
District Attorney

A TRUE BILL

PEI TSAI  
Foreman of the Grand Jury  
First Term—1988

PEOPLE V. THOMAS J. CORBIN

ALIBI DEMAND  
L. 1974, ch. 420  
CPL Section 250.20

PLEASE TAKE NOTICE, that if you or any of you intends to offer a trial defense, that at the time of the commission of the crime or crimes charged you were at some place or places other than the scene of the crime or crimes, and to call witnesses in support of such defense, you must, within eight (8) days from the date of service hereof, serve upon the District Attorney of Dutchess County, and file a copy thereof with the Court, a "Notice of Alibi" reciting:

- a) The place or places where you claim to have been at the time of the commission of the alleged crime or crimes.
- b) The names, the residential addresses, the places of employment, and the addresses thereof, of every such alibi witness upon whom you intend to rely.

PLEASE TAKE FURTHER NOTICE, that if at trial you call such an alibi witness without having served the demanded Notice of Alibi, or if having served such a notice you call a witness not specified therein, the People will move to exclude any testimony of such witness relating to the alibi defense.

Yours, etc.,

WILLIAM V. GRADY  
Dutchess County District Attorney  
10 Market Street  
Poughkeepsie, New York 12601

DA-84R



**Bill of Particulars.**

STATE OF NEW YORK

COUNTY COURT : DUTCHESS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

*against*

THOMAS J. CORBIN

Ind. #6/86

The Plaintiff, as and for its Bill of Particulars, alleges:

As to All Counts of the Indictment:

A. The date when the crime was committed was on or about the 3rd day of October, 1987.

B. The time when the crime was committed was in the evening hours, more particularly between 6:00 p.m. and midnight.

C. The place where the crime was committed was in the Town of LaGrange, County of Dutchess and State of New York, more particularly on Route 55, approximately a quarter of a mile east of the Redl's Salvage Yard.

*Substance of Defendant's Conduct as to All Counts of the Indictment*

On October 3, 1987, at approximately 6:35 p.m., the defendant was operating his 1987 Chevrolet motor vehicle in a westerly direction on Route 55 in the Town of LaGrange, County of Dutchess and State of New York. At about that time, the defendant drove his vehicle across the median of the highway into the eastbound lane of Route 55 and struck the rear view mirror of an eastbound vehicle. He continued in the eastbound lane and struck a 1986 Buick Sentry sedan operated by Brenda Dirago and occupied by her husband, Daniel Dirago. At the time of the impact, the left front side of the defendant's vehicle was approximately nine feet to the left of the median or center portion of Route 55, that is, the left front of the defendant's vehicle was nine feet into the eastbound lane of Route 55. The left front of the defendant's vehicle struck the left front of the Dirago vehicle with an approximate overlap of two feet. As a result of this collision the Buick was driven in a lateral manner toward the south and came to rest on the southern shoulder of Route 55 adjacent to the point of impact. The defendant's vehicle continued for a distance of approximately twenty feet rotating in a counter clockwise motion and coming to rest astride the median of the highway. At the time of the impact, the defendant was driving at a speed of approximately forty-five to fifty miles an hour. A moderate to hard rainfall was occurring at the time of the collision. As a result of the impact, Brenda Dirago suffered massive head injuries and was removed from the scene by ambulance to Vassar Brothers Hospital where, as a result of those injuries, she died later the same evening. As a result of this collision, Daniel Dirago suffered facial lacerations which required suturing, a fractured nose and contusions to his torso and left arm. The defendant, Thomas Corbin was also injured in the collision and was removed to St. Francis



Hospital in Poughkeepsie, New York. After treatment at St. Francis Hospital, he was observed by the arresting officer to have a strong odor of alcoholic beverage on his breath, which confirmed the observations of additional officers initially at the scene, red bloodshot eyes and slurred speech. The defendant admitted to the arresting officer that he had been drinking and a prescreen alco-sensor test was positive for the presence of alcohol. Defendant was thereafter arrested for Driving While Intoxicated and consented to a withdrawal of his blood for additional testing. The results of that examination revealed the defendant to have a .19 percent by weight of alcohol in his blood. Based upon the foregoing, it is apparent that the defendant operated a motor vehicle on a public highway in an intoxicated condition having more than .10 percent of alcohol content in his blood, that he failed to keep right and in fact crossed nine feet over the median of the highway while driving at approximately forty-five to fifty miles an hour in heavy rain, which was a speed too fast for the weather and road conditions then pending and struck the vehicle owned and operated by the victims head on which resulted in injuries to Daniel Dirago and, initially, injuries to Brenda Dirago and her later death. By so operating his vehicle in the manner above described, the defendant was aware of and consciously disregarded a substantial and unjustifiable risk of the likelihood of the result which occurred. This risk was of such nature and degree that disregard thereof was a gross deviation from the standard of care he should have exercised in this situation. It is equally clear that the defendant failed to perceive a substantial and unjustifiable risk that this result would occur. By his failure to perceive this risk while operating a vehicle in a criminally negligent and

reckless manner, he caused physical injury to Daniel Dirago and the death of his wife, Brenda Dirago.

Dated: January 25, 1988  
Poughkeepsie, New York

WILLIAM V. GRADY  
Dutchess County District Attorney  
Court House  
10 Market Street  
Poughkeepsie, New York 12601

**Defendant[s] Notice of Omnibus Motion.**

COUNTY COURT OF THE STATE OF NEW YORK

COUNTY OF DUTCHESS

THE PEOPLE OF THE STATE OF NEW YORK,

*Plaintiff,*

*against*

THOMAS J. CORBIN,

*Defendant.*

Ind. No. 6/88

SIRS:

PLEASE TAKE NOTICE that upon the annexed affirmation of STEPHEN L. GRELLER, affirmed the 31st day of March, 1988, the Affidavit of THOMAS J. CORBIN, sworn to the 31st day of March, 1988, the Indictment No. 6/1988, and upon all the prior pleadings and proceedings heretofore had herein, the defendant will move this Court, at a Term thereof, to be held in and for the County of Dutchess, at the Courthouse located at 10 Market Street, Poughkeepsie, New York, on the 4th day of April, 1988, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order:

1. Pursuant to Article 40 of the Criminal Procedure Law dismissing each and every count of the Indictment on the grounds that same are barred in that this prosecution is exempt by reason of previous prosecution; and for a further

2. Pursuant to Criminal Procedure Law Section 210.30(2) requesting that the Court examine the stenographic minutes of the Grand Jury proceeding resulting in the instant Indictment, together with the charge made thereto for the purpose of determining whether the evidence before the Grand Jury was legally sufficient to support the charges contained in the Indictment; and upon such inspection for a further Order dismissing said Indictment on the grounds that the evidence submitted to the Grand Jury was not legally sufficient to establish the commission by the defendant of the crimes charged or any lesser included offense and that the same is insufficient as a matter of law to accuse the defendant of the felonies as set forth in the Indictment; that the evidence presented to the Grand Jury was otherwise insufficient and defective and that the charge presented was defective as a matter of law; and for a further

3. Pursuant to Criminal Procedure Law Section 210.30(2)(3) requiring the Court to disclose to the defendant: (a) Grand Jury testimony pertinent, relevant and germane to the count as set forth in the Indictment; (b) charge in its entirety, as well as all other portions of the Grand Jury minutes, together with all exhibits that shall be reviewed, read and viewed by the Court in making its decision pertaining to the sufficiency of the evidence presented; and for a further

4. Requiring the People, pursuant to Criminal Procedure Law Section 200.95, to file a Bill of Particulars setting forth the following:

a. The date, time and place of the occurrences alleged in the Indictment;

b. The substance of defendant's conduct as it pertains to the Indictment charging Manslaughter in the Second Degree and Vehicular Manslaughter in the Second Degree;

c. The substance of defendant's conduct as it pertains to the charge of Criminally Negligent Homicide;

d. All injuries allegedly sustained under the Fifth Count of the Indictment;

e. Each and every act, occurrence and physical condition in support of the contention that defendant was intoxicated as alleged in the Indictment;

5. Pursuant to Criminal Procedure Law Article 710 suppressing the use by the People of any and all statements, admissions, and confession allegedly made by the defendant to law enforcement officials as same were received in violation of defendant's constitutional rights; and for a further

6. Pursuant to Criminal Procedure Law Article 710 suppressing the use by the People of any and all physical evidence allegedly seized by the People on the grounds that any such seizure was not based upon probable cause and was otherwise violative of defendant's rights; and for a further

7. Suppressing the use by the People of any and all of defendant's previous convictions and prior bad acts; and for a further

8. Pursuant to *Brady v. Maryland* for the receipt of all exculpatory materials in the possession of the People or known, by the exercise of due diligence, to exist; and for a further

9. Permitting defendant to submit additional motions as the need arises based upon the receipt of additional information pursuant to this application; and for a further

10. Pursuant to Section 240.20 of the Criminal Procedure Law requiring the People to permit discovery and inspection of the following:

a. All reports and documents or copies thereof concerning the physical or mental examinations, or scientific tests or experiments made in connection with this case, including all expert and accident reconstruction reports that are in the possession, custody and/or control of the District Attorney, the existence of which is known or which should, through the exercise of due diligence, become known to the District Attorney;

b. Statements of all witnesses concerning the crimes charged herein made to a public servant or to any person acting under his direction or in cooperation with him, exculpatory or otherwise, which is within the possession, custody and/or control of the District Attorney, the existence of which is known or which should become known through the exercise of due diligence by said District Attorney;

c. The names and addresses of all witnesses to the crimes charged herein whether or not the People intend to call said person as a witness or otherwise;



d. The arrest and conviction records of persons the District Attorney intends to call as witnesses during the trial of the charges herein;

e. A true and complete copy of any photographs taken of the defendant, including so-called "mug shots";

f. The names and addresses of all persons who have offered or given statements which are exculpatory in nature whether or not the District Attorney plans to call these persons herein as witnesses during the trial of this case;

g. Any evidence including records, statements and/or leads to evidence which are exculpatory in nature and in the possession of the District Attorney and which may be useful for the defense of the charges which are known to him to exist or which should, through the exercise of due diligence, become known to the District Attorney pursuant to *Brady v. Maryland*, 373 U.S. 83;

h. A pre-trial inventory and inspection of all items to be offered as evidence against this defendant under the supervision of the District Attorney's Office;

i. A statement as to any information which may adversely reflect upon the People's witnesses, either as to but not limited to, information pursuant to *Giglio v. U.S.*, 405 U.S. 150, any criminal records of any and all witnesses, if any, and the personal use of drugs, any records and/or evidence of psychiatric treatment or of confinement to any narcotic addiction institution;

j. Copies of any and all police reports in the possession of the prosecution and/or prepared by the arresting agency in this matter;

k. Any and all photographs or diagrams, and if so, permit the defense to examine same;

l. The precise content of each and every oral statement made by the defendant to law enforcement officers;

m. Any document, report or writing prepared relating to or incorporated by officers or reflected upon or summarizing any of defendant's statements;

n. Any and all evidence or materials pursuant to *Brady v. Maryland* which does or may damage or affect the credibility of any police officer or person or witness who may testify in support of the Indictment or in rebuttal to any testimony offered by the defendant or witnesses;

o. Copies of any and all arrest warrants;

p. All written statements;

q. All physical condition reports;

r. Precise and total content of any oral statements and/or any failed sobriety tests;

s. Any notes or memoranda made in connection with any statement or field sobriety tests;

t. Any and all tape recordings made of the defendant's voice or with regard to any aspect of this investigation;

u. All names of the police officers who were involved in the arrest of the defendant;

v. A statement indicating the authority by which the police placed the defendant under arrest;



w. All scientific and accident reconstruction tests and reports conducted re this matter, including but not limited to all notes and records of the arresting officer regarding defendant's alleged intoxicated condition, alcohol influence reports, field sobriety tests, alcohol condition reports, all reports relating to the taking of any chemical test to determine the presence of alcohol, as well as all others;

x. The exact content and substance of any request made to the defendant to submit to any chemical or other test to determine intoxication or any refusal thereof;

y. Any photographs or drawings relating to the criminal action;

z. Anything required to be disclosed prior to trial to the defendant by the prosecutor, pursuant to the Constitution of the State of New York;

aa. All personal records and files regarding the employment of each and every police officer who arrested or guarded defendant and who will testify at the time of trial; and

bb. A full and complete description of all "property";

11. For such other and further relief as the Court may deem just and proper.

Dated: Poughkeepsie, New York  
March 31, 1988

CRANE WOLFSON ROBERTS  
& GRELLER  
Attorneys for Defendant  
11 Market Street  
Poughkeepsie, New York 12601  
(914) 454-2200

TO: DUTCHESS COUNTY DISTRICT ATTORNEY

**Petitioner's CPLR Article 78 Petition (in the Nature of Prohibition).**

APPELLATE DIVISION OF THE SUPREME COURT

SECOND DEPARTMENT: COUNTY OF KINGS

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IN THE MATTER OF AN APPLICATION

OF

THOMAS J. CORBIN,

*Petitioner,*

For a Judgment pursuant to Article 78 of the CPLR,

JUDITH A. HILLERY, as Judge of the County Court,  
Dutchess County, and WILLIAM V. GRADY, as District  
Attorney of Dutchess County,

*Respondents.*

Index No.:

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Petitioner, THOMAS J. CORBIN, residing at 36 Vanderwater Drive, Wappingers Falls, New York 12590, for his Petition, respectfully alleges as follows:

1. I am a resident of Dutchess County, New York, and the Petitioner in the above-captioned matter which requests certain relief pursuant to Article 78 of the Civil Practice

Law and Rules. The allegations contained in this Petition are based upon my own personal knowledge except where stated to be made upon information and belief in which case the sources of said information, and the grounds for such belief being an examination of my case file maintained in my attorneys' office, and the materials previously supplied to me and/or my attorneys by the District Attorney of Dutchess County.

2. I am the Defendant in the matter of People of the State of New York against Thomas J. Corbin, now pending in the County Court of Dutchess County, Indictment No.: 6/88.

3. Upon information and belief, the Respondent, Hon. Judith A. Hillery, is a Judge of the County Court of the County of Dutchess, and has been acting in such capacity at all relevant times alleged herein.

4. Upon information and belief, the Respondent, William V. Grady, is the District Attorney of Dutchess County, and had been acting in such capacity at all relevant times alleged herein.

5. This is a Petition pursuant to Article 78 of the CPLR which seeks a Judgment and Order in the nature of a Writ of Prohibition in that my above-mentioned prosecution in the County Court of Dutchess County on Indictment No.: 6/88 is a subsequent prosecution within the meaning of Article 40 of the Criminal Procedure Law and as such, is barred by reason of a former prosecution and that former jeopardy has attached.

6. On October 3, 1987, I was involved in an automobile accident on State Route 55 in the Town of LaGrange, Dutchess County, State of New York.

7. Upon information and belief, Brenda Dirago, who was also involved in the same automobile accident, expired as a result of injuries she sustained in the above-mentioned automobile accident.

8. On October 3, 1987, I was informed that I was under arrest by members of the Dutchess County Sheriff's Department, and served with 2 Uniform Traffic Tickets charging me with Driving While Intoxicated, in alleged violation of section 1192 of the New York State Vehicle and Traffic Law, and Failure to Keep Right, in alleged violation of section 1120(a) of the New York State Vehicle and Traffic Law, respectively.

9. On or about October 15, 1987, I received a set of papers from the Dutchess County District Attorney which included the following: a) DWI Foundation Report

b) 710.30 Notice

c) Supporting Deposition

d) Statement of Readiness for Trial.

10. On October 27, 1987, the date scheduled for my arraignment in the Town of LaGrange Justice Court, Dutchess County, I pled guilty to all the above-mentioned charges. The Court accepted my pleas of guilty, and adjourned the matter for sentencing to November 17, 1987.

11. On November 17, 1987, in the Town of LaGrange Justice Court, I was sentenced to a \$350.00 fine, and a six-month revocation of my driving privileges. I received the above sentence pursuant to an affirmative recommendation by Assistant Dutchess County District Attorney, Heidi Sau-

ter, who was physically present in Court on the evening of my sentence.

12. The Court also allowed me a 20-day extension of my driving privileges to apply to attend the safe driver school which might provide me with a conditional driver's license if I qualify.

13. I paid the imposed fine, and my driving privileges are presently revoked.

14. At the time I pled guilty, the above-mentioned charges were the only ones filed against me as a result of the fatal automobile accident which occurred on Route 55 in the Town of LaGrange, County of Dutchess, on October 3, 1987.

15. I was subsequently indicted on or about January 19, 1988 and charged with MANSLAUGHTER IN THE SECOND DEGREE; VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE, (2 counts); CRIMINALLY NEGLIGENT HOMICIDE; ASSAULT IN THE THIRD DEGREE; OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL, (pursuant to section 1192(2) of the VTL); and OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL, (pursuant to section 1192(3) of the VTL), all arising out of the same incident on October 3, 1987.

16. My attorneys, CRANE, WOLFSON, ROBERTS & GRELLER, ESQS., submitted an Omnibus Motion on my behalf requesting, *inter alia*, relief pursuant to Article 40 of the Criminal Procedure Law.

17. A hearing was held on August 12, and 15, 1988 before the Respondent, Hon. Judith A. Hillery in the County Court of Dutchess County, after which, the relief requested in that portion of the Omnibus Motion was denied, by



decision dated August 18, 1988, and she has set August 25 1988 as the date for the trial of the instant Indictment.

18. The Petitioner has no adequate remedy at law, and has made no prior application to any Court for the relief requested, except as stated herein.

19. I respectfully submit that the Double Jeopardy provisions of Article 40 of the Criminal Procedure Law, as well as the Constitution of the United States, and the State of New York bar my prosecution in the County of Dutchess under Indictment No.: 6/88.

WHEREFORE, I respectfully request that this Court issue a final Order as follows:

a) Granting a Writ of Prohibition barring any subsequent prosecution arising out of an automobile accident which occurred on October 3, 1987, on State Route 55, in the Town of LaGrange, County of Dutchess, State of New York, which was the subject of my previous prosecution, conviction, and sentence, and;

b) Staying and enjoining all further proceedings on Indictment No.: 6/88 against me until the hearing of the within Application, and the entry of a final Order thereon, and;

c) For such other and further relief which as to this Court may seem just and proper.

Dated: Poughkeepsie, New York  
August 19, 1988

THOMAS J. CORBIN

Sworn to before me this

19 day of August, 1988.

DENISE K. TOMBOLILLO

Notary Public, State of New York

No. 4792932

Qualified in Oswego County

My Commission Expires 1/31/90



**Order Granting Petition for a Writ of Certiorari, Supreme  
Court of the United States, Dated November 6, 1989.**

**SUPREME COURT OF THE UNITED STATES  
OFFICE OF THE CLERK  
WASHINGTON, D. C. 20543  
November 6, 1989**

**Mr. William B. Grady  
Courthouse  
10 Market St.  
Poughkeepsie, NY 12601**

**Re: William V. Grady, District Attorney of Dutchess  
County,  
v. Thomas J. Corbin  
No. 89-474**

**Dear Mr. Grady:**

**The Court today entered the following order in the above  
entitled case:**

**The petition for a writ of certiorari is granted.**

**Very truly yours,**

**JOSEPH F. SPANIOL, JR., Clerk**